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Comments from the Pennsylvania Municipal Authorities Association To the Proposed EPA TMDL for the Chesapeake Bay Watershed

The Pennsylvania Municipal Authorities Association (PMAA) represents many of the sewage treatment plants in Pennsylvania that are mandated to meet nutrient limits to facilitate improvement to the Chesapeake Bay.

In response to the 2005 DEP Chesapeake Bay Tributary Strategy, PMAA worked with DEP and other interested stakeholders to address nutrient reductions from sewage treatment plants. These Point Source Workgroup stakeholders included: sewage treatment plant managers, engineers, and attorneys from PMAA; staff from DEP central and regional offices, and EPA; representatives from agriculture and the conservation districts; municipal government associations; the PA Builders and Harrisburg Area Builders Associations; and the Chesapeake Bay Foundation.

Numerous meetings of the Point Source Workgroup over the course of several months resulted in an equitable solution that allowed the largest 184 plants to come into compliance for nutrient removal in a three-phased schedule. This approach set uniform nutrient reduction limits of 6 mg/l TN and 0.8 mg/l TP for all plants based on their design flow. These limits will result in the point source sector achieving their share of reduction in Pennsylvania as early as 2011, and maintaining that reduction into the future. Actually, it is estimated that many sewage treatment plants will exceed their required nutrient reductions and have nutrient credits available for trading.

Given the expected success of the point source sector to surpass compliance goals, it is inconceivable that EPA would require the more draconian measures of 3 mg/l TN and 0.1 mg/l TP included in their TMDL “backstop” measures. This is especially troubling when it actually amounts to a penalty for meeting and exceeding existing goals simply to pass additional point source reductions on to sectors that have not been able to present clear evidence of compliance to meet their own reductions. This point was made very clear in EPA’s *PA WIP Deficiency Letter*, September, 2010: ***Load from point source reductions redistributed to forest, septic, and agriculture sources as possible while still meeting nitrogen, phosphorus and sediment allocations.***

Equally troubling is that the amount of additional reduction from point sources that may now be required to treat to “limit-of-technology” essentially nets a fraction of the needed reductions from Pennsylvania. This mere fraction however carries a huge financial burden, basically more than doubling the \$1.4 billion* treatment plants have already invested in Bay nutrient reduction upgrades. From a public policy perspective, this represents a dubious planning and fiscal approach to actually achieving a successful strategy for compliance, forcing the rate-paying public to fund projects with little return on that investment.

(*Metcalf and Eddy report. Six-month study commissioned by the Pennsylvania State Legislature released in November 2008. Report available at: <http://lbfc.legis.state.pa.us>)

What makes the entire Bay nutrient reduction effort unconscionable is that EPA is foisting the responsibility for correcting nearly all non-compliance onto the states. Non-point source contributors to sediment and nutrient loads remain largely uncaptured by federal law. This lack of oversight through a federal statutory program is glaring in its omission, both for the Bay and other impacted watersheds nationwide. To exacerbate that situation by excessively targeting those sectors it can exert control over, even if the resulting reductions are de minimus, amounts to nothing more than an accounting process for the sake of showing some activity is occurring, even if it amounts to little in the result column.

SPECIFIC CONCERNS

1. PMAA endorses the currently recognized PA DEP limits of 6 mg/l N and 0.8 mg/l P for POTWs

As noted above, the compliance plan created by the Point Source Workgroup, and accepted by DEP and EPA, should remain in its present form. It represents the most equitable and efficient solution that allows the largest 184 plants, and hundreds of smaller dischargers, to come into phased compliance while removing nutrients based on their design flow. This plan will exceed the reductions initially attributed to point sources.

2. Delivery Ratios

It is imperative that states receive the most up-to-date delivery ratio model from EPA so they can incorporate it immediately into provisions of their Watershed Implementation Plans (WIP). This delivery ratio must be realistic and workable so states can deal with sector reductions, permits, trading, upgrades, and plan implementation. Lack of a viable delivery ratio spreadsheet BEFORE the state WIPs and EPA TMDL become final is irresponsible and detrimental to sound decision-making.

3. Trading

Nutrient Credit trading will be impacted by the delivery ratio issue raised above. Current and future trades may be suspect if delivery ratios change during the trading process. The EPA Bay TMDL and accompanying documents must lay out a clear program for interstate and intrastate trading programs so that uniform protocol can be applied. Also, EPA needs to ensure that oversight is in place so that it is guaranteed that agricultural credits surpass baseline and threshold (or whatever EPA recognizes as a compliance trigger) on a continuing basis in order to trade.

EPA should also consider how to make trading more beneficial between credit producers and credit buyers. This would include more EPA-state involvement in accepted BMP reductions, the approval of unique and innovative trading opportunities (such as oyster bed creation, planting of submerged grass beds, etc.), and extension of the life of a credit beyond the currently limited one-year lifespan.

4. Compliance by Other Sectors

PMAA recognizes the difficulty in achieving timely compliance from the non-point source sectors. We encourage EPA and the states to work together to develop methodologies for these sectors that will merge both voluntary and mandatory requirements to allow reductions to be met in a scheduled timeframe. These methodologies should be delineated to the fullest extent possible in the final WIP submission of each state and the final TMDL from EPA.

In particular, EPA should recognize the existing statutory and regulatory authority that DEP has through the Pennsylvania Clean Streams Law. This compliance tool seems to be totally overlooked by EPA in their comments to the Pennsylvania WIP. EPA should work with DEP so that all inspection, compliance, and/or enforcement options available under this Act are fully incorporated in the WIP, including specific provisions for the successful implementation of activities that ensure compliance from all non-point source sectors.

5. Funding

EPA recognizes the need for more federal financial assistance to all states and impacted entities to address their Bay reductions. EPA should recommend to Congress, in a delineated report, the amount of funding necessary to cover both financial and technical assistance to all impacted sectors. The Blue Ribbon Finance Panel, convened by the Commission in 2004, made numerous recommendations that have virtually been ignored over the years. It is imperative that this funding shortfall be addressed.

6. New Technologies

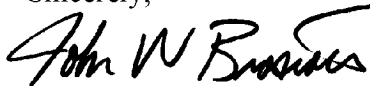
EPA needs to partner with scientific and technical experts to develop new technologies that can be implemented in the various sectors contributing to the nutrient and sediment load. They need to encourage pilot programs and offer funding for new and innovative solutions to reductions. These efforts can be in conjunction with other federal agencies such as the Department of Agriculture, Department of Energy, USGS, etc. They should also be in conjunction with state agencies, local governments, and “vetted” providers of new technologies.

Conclusion

It appears that the EPA critique of the state WIPs and the release of the draft TMDL and “backstop” provisions centered everyone’s attention on the fact that cleanup of the Chesapeake Bay was a national priority, with consequences for non-achievement. The current strong focus of attention on this situation by many federal, state, and local policy makers should initiate the actions necessary to restore the Bay. EPA must seize the current opportunity, keep all stakeholders engaged, lobby for funding, and spearhead the efforts to achieve results. *A fair and equitable approach that involves commitment from all sectors is paramount to that effort.*

Please call John Brosious at 717-737-7655, or e-mail at brosious@municipalauthorities.org for any additional information or if there are any questions.

Sincerely,



John W. Brosious
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